

Evaluation for "Take" Avoidance of Northern Spotted Owl, 2008

[45 Day Notice Published July 25, 2008]

Amend 14 CCR 895 - Abbreviations Applicable Throughout Chapter

Amend 14 CCR § 895.1 - Definitions

Amend 14 CCR § 919.9, 939.9 - Northern Spotted Owl

Amend 14 CCR § 919.10, 939.10 - Take of Northern Spotted Owl

**895 Abbreviations Applicable Throughout Chapter**

**\*\*\*\*\*PTHP**                      Program Timber Harvesting Plan

**QSOC**                      Qualified Spotted Owl Consultant

**R**                      Range: a row of townships, six miles in width, between two successive meridian lines of the U.S. General Land Survey.\*\*\*\*\*

**895.1- Definitions**

**\*\*\*\*\* Active Nest** means a bird nest site at which breeding efforts have recently occurred as determined by the Department of Fish and Game, as specified below:

For the Great Blue Heron, Great Egret, recently means within the last two years.

For the Golden Eagle, Osprey, Goshawk, recently means within the last three years.

For the Bald Eagle and Peregrine Falcon, recently means within the last five years.

Nests that have not been used within this time period are considered abandoned.

1        ACTIVITY CENTER means a known northern spotted owl site  
2 documented from detections, pursuant to the USFWS document "Protocol  
3 For Surveying Proposed Management Activities That May Impact Northern  
4 Spotted Owls" revised March 17, 1992.

5        (a) An activity center is established by:

6                (1) Resident Single Status is where a northern spotted owl  
7 is detected in the same general area on at least three visits in one  
8 or two consecutive years.

9                (2) Pair Status Unknown is where the presence or response  
10 of two birds of the opposite sex is detected but pair status cannot be  
11 determined and where at least one member must meet the resident single  
12 requirements.

13                (3) Pair Status wherein a male and female are heard and/or  
14 observed (either initially or through their movement) in proximity  
15 (less than one-quarter mile apart) to each other on the same visit; or  
16 a male takes a mouse to a female; or a female is detected on the nest;  
17 or one or both adults are observed with young.

18                (4) Unoccupied Status where no responses have been obtained  
19 from a previously identified northern spotted owl activity center  
20 after 3 years of survey, barring other evidence to the contrary.

21                A northern spotted owl activity center will not be  
22 considered an activity center when an unoccupied activity center has  
23 been evaluated by a QSOC for habitat conditions, survey results, and  
24 survey quality that supports a conclusion that the activity center is  
25 not being utilized.

1       **Adequate Site Occupancy** means the range of stocking levels which  
2 provide a balance between the largest number of trees per acre capable  
3 of maximum individual tree growth on future crop trees and maximum  
4 overall stand growth. This balance is achieved when stocking levels  
5 are within Zones 2 and 3 of the Langsaeter curve, as shown in "The  
6 Practice of Silviculture", by David Smith (1962).\*\*\*\*

7       \*\*\*\* **Nest Tree** means the tree, snag, or other structure that contains  
8 the nest of a species of special concern.

9       **Northern Spotted Owl Breeding Season** means the period February 1  
10 through July 31 for the Coast Forest District and February 1 through  
11 August 31 for the Northern Forest District.

12       **Occupied Nest** means a nest currently being used by one or more  
13 adult birds with eggs or young present.\*\*\*\*\*

14       \*\*\*\***Public Road** means a road open to the general public which is:  
15 (a) in the State or County road system, or (b) a road on which a  
16 public agency has deeded, unlimited easement.

17       **QUALIFIED SPOTTED OWL CONSULTANT** means a person with a Bachelor  
18 of Science degree in either Wildlife Biology, Biology, Forestry,  
19 Zoology or related field and a minimum of two seasons of verifiable  
20 northern spotted owl survey and biological evaluation work in the  
21 field, with experience and education to recognize and analyze data  
22 from field conditions and present information which helps determine  
23 harm or harassment of the northern spotted owl from proposed projects.  
24 The individual shall be able to demonstrate, in the field, sufficient  
25 knowledge and education to recognize and analyze data from field  
conditions and present information which helps determine harm or  
harassment of the northern spotted owl.

**Quality of Water** means the level of water quality as specified by  
the applicable Water Quality Control Plan, including its water quality  
objectives, policies and prohibitions.\*\*\*\*\*

1 **919.9, 939.9 Northern Spotted Owl [Coast, Northern]**

2 Every proposed timber harvesting plan, NTMP,\*\*\*\*\* individual  
3 northern spotted owl.

4 When subparagraphs (a),~~(b), or (c)~~(f)~~or~~ are used, the Director,  
5 prior to approval, shall consult with a ~~state employed biologist~~ QSOC  
6 designated by the Department ~~who is accepted by the Department of Fish~~  
7 ~~and Game or the Fish and Wildlife Service as having sufficient~~  
8 ~~knowledge and education to determine harm or harassment of the~~  
9 ~~Northern Spotted Owl. The biologist~~ QSOC shall make written  
10 recommendations regarding whether the retained habitat configuration  
11 and protection measures proposed in the THP will prevent a take of the  
12 owl.

13 ~~The Department may designate independent biological consultants~~  
14 ~~QSOCs, acceptable to the Department, who can fulfill the requirements~~  
15 ~~within subparagraph (a) of these rules. The plan submitter has the~~  
16 ~~discretion whether to utilize a designated independent consultant~~  
17 ~~under subparagraph (a). All other requirements under the northern~~  
18 ~~spotted owl rules specifying a designated biologist are to be~~  
19 ~~fulfilled by a state employed biologist. To be designated by the~~  
20 ~~Department, the independent consultant must be accepted by either the~~  
21 ~~Department of Fish and Game or the Fish and Wildlife Service. This~~  
22 ~~acceptance requires the independent consultant to demonstrate, in the~~  
23 ~~field, sufficient knowledge and education to recognize and analyze~~  
24 ~~data from field conditions and present information which helps~~  
25 ~~determine harm or harassment of the northern spotted owl. The same~~  
~~educational and experience criteria utilized to designate state-~~

1 ~~employed biologists will be applied.~~ may aid the RPF in fulfilling the  
2 requirements within subparagraphs (b) and (c) of these rules or to  
3 provide biological expertise, to the Director, upon request, under  
4 subparagraph (g) and 14 CCR § 919.10. When a ~~designated independent~~  
5 ~~consultant~~ QSOC is used to fulfill the requirements of subparagraphs  
6 ~~(a)~~ (b), (c) and (g), they ~~independent consultant~~ shall make written  
7 observations and recommendations regarding whether the retained  
8 habitat configuration and protection measures proposed in the THP will  
9 prevent a take of the owl.

10 In consultation with ~~the state-employed designated biologist a~~  
11 QSOC, the Director may adjust standards established by this section  
12 based on site specific circumstances in a manner which is consistent  
13 with information collected on owl behavior in California, and the  
14 prohibitions of the Federal Endangered Species Act.

15 **(a)** If the project proponent requests preliminary review of the  
16 proposed operation or Spotted Owl Resource Plan prior to filing, a  
17 ~~designated biologist (either state-employed or an independent~~  
18 ~~consultant)~~ QSOC shall be assigned by the Director to evaluate whether  
19 the proposed operation would result in the taking of an individual  
20 northern spotted owl. This evaluation is preliminary to and separate  
21 from the final "take" determination to be made under Section 919.10  
22 (939.10). In making that evaluation:

23 **(1)** The ~~designated biologist~~ QSOC shall apply the criteria  
24 set forth in ~~Section 14~~ CCR § 919.10 [939.10].

25 **(2)** The ~~designated biologist~~ QSOC may request that the  
submitter provide additional information which the ~~designated~~

1 ~~biologist~~ QSOC finds necessary to evaluate if a "take" would occur,  
2 provided that the ~~designated biologist~~ QSOC states the type of  
3 information needed, the purpose of the information, and the level of  
4 accuracy necessary to meet the stated purpose.

5 (3) If the ~~designated biologist~~ QSOC concludes that no  
6 prohibited taking would occur, the ~~biologist~~ QSOC shall inform the  
7 submitter as soon as practicable and shall document the decision and  
8 the information which was relied upon by the ~~biologist~~ QSOC in the  
9 above evaluation. Reference data shall be readily available for the  
10 Director's review upon request.

11 (4) If the ~~designated biologist~~ QSOC concludes that the  
12 proposed timber operation or Spotted Owl Resource Plan would result in  
13 a taking, he or she shall inform the submitter as soon as practicable  
14 and shall comply with ~~Section 14 CCR~~ § 919.10(c) [939.10(c)] within 10  
15 working days of making this determination.

16 (5) Requests for pre-filing consultation shall be handled  
17 in the order in which received.

18 (b) The RPF shall include the following information:

19 (1) On a planimetric or topographic map of a minimum scale  
20 of 1:24,000, provide the following:

21 (A) The location and acreage of owl habitat. This  
22 information shall be shown for the area within the boundary both as it  
23 exists before and after timber operations. The Director shall  
24 determine if timber typing maps may qualify as showing owl habitat.

25 (B) Identify any adjoining owl habitat by type  
within .7 miles of the boundary.

1                   (C) When mapping functional owl nesting, roosting,  
2 and foraging habitat, include additional information which helps  
3 define those areas such as: location of topography features, riparian  
4 vegetation, hardwood component, water, potential nest and roost sites,  
5 and potential suitable forage areas.

6                   (D) All known owl observations, identified by  
7 location and visual or nonvisual confirmation within 1.3 miles of the  
8 boundary. This information shall be derived from the landowners and  
9 RPF's personal knowledge, and from existing spotted owl data bases  
10 available from the Department.

11                   (2) Discussion on how functional characteristics of owl  
12 habitat will be protected in terms of the criteria stated within  
13 ~~Section 14~~ CCR § 919.10(a) and (b) [939.10(a) and (b)].

14                   (3) As adjacent landowners permit and from other available  
15 information, a discussion of adjacent owl habitat up to .7 mile from  
16 the proposed boundary and its importance relative to the owl habitat  
17 within the boundary.

18                   (4) Describe any proposals for monitoring owls or owl  
19 habitat which are necessary to insure their protection. Monitoring is  
20 not required for approval.

21                   (5) Discussion of any known owl surveys that have been  
22 conducted within 1.3 miles of the boundary. Include the dates,  
23 results and methodologies used if known.

24                   (6) A proposed route that will acquaint the designated  
25 biologist and other reviewers with the important owl habitat.

1           (7) Attach aerial photos of the area, if available.

2 (Aerial photos are not required.)

3           (c) Where certification is made by the RPF and adequate records  
4 are kept showing that owl surveys were conducted sufficient to  
5 demonstrate the absence of owls from an area, there will be a high  
6 priority review. There shall be verification that:

7           (1) The surveys have been conducted throughout the area  
8 within .7 miles of the boundary in accordance with the USFWS approved  
9 protocol ("Guidelines for Surveying Proposed Management Activities  
10 Which May Impact Northern Spotted Owls"; USFWS; March 17, 1994~~2~~).  
11

12           (2) The surveys were conducted during the current or  
13 immediately preceding survey period as prescribed by the protocol  
14 cited in (c) (1) above.

15           (3) The surveys reveal no nest sites, activity centers or  
16 owl observations in the area surveyed; and

17           (4) The surveys reveal no activity centers, active nest  
18 sites or repeated observations indicating the presence of mates and/or  
19 young are within 1.3 miles of the boundary based on a review of the  
20 landowner and RPF's personal knowledge and the Department of Fish and  
Game's spotted owl data base.

21           (d) If the plan submitter proposes to proceed under an  
22 "incidental taking" permit or any other permit covering the ~~N~~orthern  
23 spotted owl issued by the U.S. Fish and Wildlife Service, the  
24 submitter shall supply a copy of the permit upon the Department's  
25 request.



1       **(e)** If the submitter proposes to proceed pursuant to the outcome  
2 of a discussion with the U.S. Fish and Wildlife Service, the submitter  
3 shall submit a letter prepared by the RPF that the described or  
4 proposed management prescription is acceptable to the USFWS.

5       **(f)** If:

6           **(1)** The submitter's proposed operations were reviewed by a  
7 ~~designated biologist~~ QSOC under ~~Section 14~~ CCR § 919.9(a) [939.9(a)];  
8 and

9           **(2)** The ~~designated biologist~~ QSOC recommended minimum  
10 modifications to the proposed operations which would be necessary to  
11 bring the impacts to a level at which no "take" would occur and the  
12 submitter has adopted those recommendations; and

13           **(3)** The proposed operations remain substantially the same  
14 as the operations which the ~~designated biologist~~ QSOC reviewed, the  
15 submitter shall provide a copy of the recommendations made by the  
16 ~~designated biologist~~ QSOC and the submitter shall explain how the  
17 proposed operations comply with those recommendations.

18       **(g)** Where a nest site or activity center has been located within  
19 the THP boundary or within 1.3 miles of that boundary, the RPF shall  
20 determine and document that the habitat described in (1)-(5) below  
21 will be retained after the proposed operations are completed:

22           **(1)** Within 500 ft. of the active nest site or pair  
23 activity center the characteristics of functional nesting habitat must  
24 be maintained. No timber operations shall be conducted in this area  
25 during the breeding season unless reviewed by the Department of Fish

1 and Game or the QSOC, and approved by the Director as not constituting  
2 a take. Timber operations may be conducted in this area outside the  
3 breeding season if appropriate measures are adopted to protect nesting  
4 habitat.

5 (2) Within 500-1000 ft. of the active nest site or pair  
6 activity center, retain sufficient functional characteristics to  
7 support roosting and provide protection from predation and storms. No  
8 timber operations shall be conducted in this area during the breeding  
9 season unless reviewed by the Department of Fish and Game or QSOC and  
10 approved by the Director as not constituting a take.

11 (3) 500 acres of owl habitat must be provided within a .7  
12 mile radius of the active nest site or pair activity center, unless an  
13 alternative is reviewed by the Department of Fish and Game or QSOC,  
14 and approved by the Director as not constituting a take. The 500  
15 acres includes the habitat retained in subsections (1) and (2) above  
16 and should be as contiguous as possible. Less than 50% of the  
17 retained habitat should be under operation in any one year, unless  
18 reviewed by the Department of Fish and Game or QSOC, and approved by  
19 the Director.

20 (4) 1336 total acres of owl habitat must be provided 1.3  
21 miles of each nest site or pair activity center, unless an alternative  
22 is reviewed by the Department of Fish and Game or QSOC, and approved  
23 by the Director as not constituting a take. The 1336 acres includes  
24 the habitat retained within subsections (1) - (3) above.

25 (5) The shape of the areas established pursuant to

subsections (1) and (2) shall be adjusted to conform to natural landscape attributes such as draws and ~~streamcourses~~ watercourses while retaining the total area required within subsections (1) and (2) above.

**919.10, 939.10 Take of Northern Spotted Owl [Coast, Northern]**

~~The designated biologist and the Director shall apply t~~The following criteria shall be applied to the information provided by the plan submitter and obtained during the review period to make a finding as to whether the timber operations, as proposed, will "take" an individual northern spotted owl. ~~The designated biologist shall use the best professional judgment in making that finding.~~

~~(a) The designated biologist and the Director shall determine that t~~The proposed habitat modification would result in "harm" to an individual spotted owl if any of the following conditions exist.

(1) Feeding habits would be significantly impaired because prey base or ability to catch prey would be adversely altered;

(2) Breeding success would be significantly impaired because of a reduction in surrounding owl habitat before the young have had an opportunity to successfully disperse from their nesting site;

(3) Nesting behavior would be significantly impaired because the nest site or adjoining area up to 500 ft. from the nest site would be adversely altered; or

(4) Sheltering (which includes roosting, feeding, and

1 nesting) would be significantly impaired because the ability to escape  
2 predators, survive severe weather, or find appropriate microclimates  
3 would be adversely altered.

4 ~~(b) The designated biologist and the Director shall determine~~  
5 ~~that a~~An individual northern spotted owl would be "harassed" by the  
6 proposed timber operations if there is a likelihood that any of the  
7 following conditions exist:

8 (1) Feeding habits would be significantly disrupted  
9 because the prey base or the ability to catch prey would be impaired;

10 (2) Breeding success would be significantly disrupted;

11 (3) Nesting behavior would be significantly disrupted  
12 because activities would be conducted within 500 feet of a nest site;  
13 or

14 (4) Sheltering (which includes roosting, nesting, or  
15 feeding) would be significantly disrupted because the ability to  
16 escape predators, survive severe weather, find appropriate microclimates  
17 would be adversely altered.

18 (c) If ~~the designated biologist concludes that~~ the proposed  
19 operations will result in a taking of the owl, ~~he/she~~the Director  
20 shall provide the plan submitter with the following information:

21 (1) The reasons for the determination, including an  
22 analysis of the factors set forth in this section;

23 (2) The information which was relied upon and which was  
24 instrumental in making the determination; and  
25

1           (3) Recommendations for minimum modifications to the  
2 proposed operations which would be necessary to bring the impacts to a  
3 level at which "take" would not occur.

4  
5 Note: Authority cited: Section 4551, Public Resources Code. Reference:  
6 Sections 4513, 4551.5, 4582.75, 4583, Public Resources Code; and 50  
CFR 17.11.

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